should ensure that CMRS providers can maintain the confidentiality of proprietary information submitted to a State commission under the statutory regime.[43]

In light of the 1996 Act, however, the Commission should not impose tariffing for LEC-CMRS interconnection compensation arrangements. The 1996 Act explicitly preserves the right of a CMRS provider to enter into a voluntary interconnection arrangement with an incumbent LEC without regard to federal interconnection requirements.[44] Although the incumbent LEC is required to submit voluntary interconnection arrangements to a State commission for approval, the 1996 Act specifies the particular grounds on which the State commission may refuse to approve such a voluntary agreement.[45] A tariffing requirement would be inconsistent with the federally protected right of CMRS providers to engage in voluntary interconnection negotiations.

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43 *Cf.* Petition of Public Utilities Commission, State of Hawaii, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii *et al.*, *Order*, 10 FCC Rcd 2359 (1995).

44 47 U.S.C. § 252(a)(1).

45 47 U.S.C. § 252(e)(2)(A).

2. Jurisdictional Issues

The Commission tentatively concluded that it could exercise authority over all LEC-CMRS interconnection rates,[46] but it seeks comments on the effect of the 1996 Act on its jurisdiction.[47] The 1996 Act conclusively resolves the issue in favor of federal regulation over all LEC-CMRS interconnection rates. Section 251 of the 1996 Act establishes general requirements for LEC interconnection rates and directs the Commission to adopt specific rules to implement these new requirements within six months.[48] Thus, the 1996 Act not only authorizes, it actually compels, the Commission to regulate both interstate and intrastate LEC interconnection rates.

The United States Supreme Court has stated that the "critical question in any pre-emption analysis is always whether Congress intended that federal regulation supersede state law."[49] In the 1996 Act, Congress created a comprehensive regulatory

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46 *NPRM* at ¶ 111.

47 *Supplemental NPRM* at ¶ 6.

48 47 U.S.C. §§ 251(b)(5), 251(c)(2)(D), 251(d)(1); *see also* discussion *supra* part II(A)(3)(a).

49 *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) ("*Louisiana PSC*") (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947).

framework that ensures nationwide uniformity in the regulation of various aspects of local service, including interconnection. In particular, Section 252 provides that a State commission may arbitrate open issues during interconnection negotiations involving incumbent LECs, but its resolution of these issues must satisfy the requirements of Section 251, including the regulations prescribed by the Commission.[50] The State commission's decision (or indecision) is subject to federal court (or Commission) review to determine its consistency with federal requirements.[51] Additionally, State interconnection regulations are preempted to the extent they are inconsistent with or "substantially prevent" the implementation of federal regulations.[52] In short, the 1996 Act confirms the primacy of federal law (including the Commission's regulations) regarding LEC interconnection rates and preempts all inconsistent State regulations.

Moreover, the Commission must adopt regulations that apply to all LEC-CMRS interconnections because, as a practical matter, the intrastate and the interstate components of LEC-CMRS interconnection are inseparable.[53] In 1987 and 1989, when

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50 47 U.S.C. § 252(c)(1).

51 47 U.S.C. § 252(e)(6).

52 47 U.S.C. § 251(d)(3).

53 Even if the Commission did not have a clear congressional mandate to regulate intrastate interconnection rates, the Commission could exercise plenary jurisdiction over such rates because the intrastate component of LEC-CMRS interconnection is inseparable from the interstate portion. *See, e.g., Louisiana PSC*, 476 U.S. at 375 n.4; *Maryland Pub. Serv.*

(continued...)

the Commission established the regulations for cellular service, the CMRS industry was still very much in its infancy. CMRS now has evolved into a service in which accurate interstate-intrastate distinctions often cannot be applied. The development of automatic roaming capabilities, call-forwarding, call-delivery, and intersystem hand-off, as well as cell site coverage areas and markets that straddle state boundaries, often make it impossible to ascertain the jurisdictional nature of services. Further, the service areas for many CMRS providers have expanded from MSAs and RSAs to larger multi-MSA/RSA systems and Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs"), and therefore customers are more likely to make interstate calls within the service area of a particular CMRS provider.[54] In these and other situations, the MTSO or LEC end office is often unable to determine the actual location of the calling party *vis-a-vis* the State boundaries.

Finally, LEC refusals to provide mutual compensation often have been based upon what the LECs contend is a lack of any clear Commission mandate for mutual compensation for intrastate traffic. This contention, therefore, has impeded the Commission's attempts to impose a federal LEC-CMRS interconnection policy.

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[53](...continued)
Comm'n v. FCC, 909 F.2d 1510 (D.C. Cir. 1990); *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 113 n.7 (D.C. Cir. 1989).

[54] This is even more likely now that the BOCs' interLATA restrictions under the Modification of Final Judgment ("MFJ") have been eliminated by the 1996 Act.

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE, INTEREXCHANGE TRAFFIC

New Par concurs with the Commission's tentative conclusion that CMRS providers, rather than LECs, should be entitled to recover access charges from IXCs for interstate, interexchange traffic that originates or terminates on CMRS networks.[55] Any less favorable treatment of CMRS providers, as compared to LECs and CAPs, would be unreasonably discriminatory and would interfere with the development of wireless services as local loop alternatives.[56] Further, these same principles apply to intrastate, interexchange traffic as well. There is no basis, particularly under the 1996 Act, to draw such a jurisdictional distinction. Likewise, the Commission should clarify that a LEC should not be allowed to collect the CCLC and end office switching charges when the LEC is not originating or terminating the call. LECs should not be permitted to collect the total amount of originating or terminating access charges from IXCs when CMRS providers are providing a significant portion of the local facilities.

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55 *NPRM* at ¶ 116.

56 *See id.*

Moreover, as co-carriers, CMRS providers should be permitted to recover such access charges directly from IXCs.[57] The Commission requests comment on whether it should adopt pricing regulations for CMRS providers' access charges.[58] It should not. Rather, the Commission should simply establish a ceiling for such charges equal to the access charges of the LEC serving the same area, less any LEC-imposed federal subsidies. This is a more efficient means of imposing reasonableness on such access charges and will eliminate the need for protracted rate-making and other proceedings.

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57 *Id.* at ¶ 117.

58 *Id.*

IV. APPLICATION OF THESE PROPOSALS

The Commission seeks comment on whether it should regulate interconnection rate arrangements between LECs and all CMRS providers or LECs and some subset of CMRS providers, such as PCS providers only.[59] Consistent with the principle of regulatory parity, the Commission must afford all CMRS providers the protection of federal interconnection rate regulation. In the *Second Report and Order*, the Commission found that there is "no distinction between a LEC's obligation to offer interconnection to Part 22 licensees and all other CMRS providers, including PCS providers."[60] Similarly, there is no justification for affording PCS licensees or any other subset of CMRS providers more favorable regulatory treatment than cellular carriers.

In addition, the Commission should clarify that its interconnection rate requirements apply only to facilities-based CMRS providers and not resellers. The underlying premise behind the 1996 Act and the *NPRM* is that all telecommunications carriers are entitled to recover the costs of providing and maintaining facilities for interconnection. Resellers lack the facilities to provide such interconnection. As a result, only facilities-based CMRS providers should recover interconnection costs.

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59 *NPRM* at ¶ 118.

60 *Second Report and Order*, 9 FCC Rcd at 1497.

V. CONCLUSION

For the foregoing reasons, the Commission should mandate LRIC-based rates for LEC-CMRS interconnection, including a "bill and keep" requirement for end office switching and local termination. The 1996 Act, adopted after the *NPRM* was released, explicitly authorizes the Commission to establish such a rate structure for both interstate and intrastate interconnection. Consistent with the 1996 Act, New Par urges the Commission to take swift action to end the established LEC practice of overcharging CMRS providers for interconnection and denying them mutual compensation.

Respectfully Submitted

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